

AMENDED IN SENATE APRIL 23, 2009

AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 407**

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**Introduced by Senator Padilla**

February 26, 2009

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An act to add Article 1.4 (commencing with Section 1101.1) to Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code, relating to water conservation.

LEGISLATIVE COUNSEL'S DIGEST

SB 407, as amended, Padilla. Property transfers: plumbing fixtures replacement.

~~(1) Existing~~

*Existing* law authorizes public entities that supply water, by the adoption of an ordinance or resolution pursuant to specified procedures, to adopt and enforce a water conservation program. Existing law requires certain disclosures to be made upon the transfer of real estate. Existing law requires that all water closets or urinals sold or installed in the state use no more than an average of 1.6 gallons or one gallon per flush, respectively.

This bill would require that, on and after January 1, 2014, all ~~existing~~ plumbing fixtures in any residential or commercial real property that are not water-conserving plumbing fixtures be replaced prior to the time of sale or transfer by the property owner with water-conserving plumbing fixtures, as defined, *with specified exceptions*. The bill would require that compliance with this ~~section requirement~~ be included as a condition of escrow for any sale or transfer. ~~The bill would require that a seller or transferor disclose this requirement in advance of any sale or transfer of real property, and would provide that this disclosure of~~

~~the requirements of this section is a material term of any sale or transfer.~~  
 The bill would require a seller or transferor of real property to certify to the prospective purchaser or transferee, in writing, ~~under penalty of perjury~~, that the requirements of this section ~~have~~ *requirement has* been satisfied. ~~By expanding the crime of perjury, this bill would impose a state-mandated local program.~~ *The bill would provide that the certification is a material term of any sale or transfer.* The bill would except from its provisions registered historical sites, certain transfers, including those between specified family members, and transfers in which a licensed plumber certifies that, due to the age or configuration of the property or its plumbing, installation of water-conserving plumbing fixtures is not technically feasible. The bill would require a real estate agent to disclose the requirements described above and would provide that an agent has no other liability in this connection. The bill would also make a statement of findings and declarations.

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~*no*.  
 State-mandated local program: ~~yes~~*no*.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 1.4 (commencing with Section 1101.1)  
 2 is added to Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil  
 3 Code, to read:  
 4  
 5 Article 1.4. Water Use Efficiency Improvements Upon Transfer  
 6  
 7 1101.1. The Legislature finds and declares all of the following:  
 8 (a) Adequate water supply reliability for all uses is essential to  
 9 the future economic and environmental health of California.  
 10 (b) Environmentally sound strategies to meet future water supply  
 11 and wastewater treatment needs are key to protecting and restoring  
 12 aquatic resources in California.  
 13 (c) There is a pressing need to address water supply reliability  
 14 issues raised by growing urban areas.

1 (d) Economic analysis by urban water agencies has identified  
2 urban water conservation as a cost-effective approach to addressing  
3 water supply needs.

4 (e) There are many water conservation practices that produce  
5 significant energy and other resource savings that should be  
6 encouraged as a matter of state policy.

7 (f) Since the 1991 signing of the “Memorandum of  
8 Understanding Regarding Urban Water Conservation in  
9 California,” many urban water and wastewater treatment agencies  
10 have gained valuable experience that can be applied to produce  
11 significant statewide savings of water, energy, and associated  
12 infrastructure costs. This experience indicates a need to regularly  
13 revise and update water conservation methodologies and practices.

14 (g) To address these concerns, it is the intent of the Legislature  
15 to require property owners to retrofit outdated, high water use  
16 plumbing fixtures upon resale, and that sellers or transferors be  
17 required to disclose these upgrades upon resale.

18 (h) It is further the intent of the Legislature that retail water  
19 suppliers are encouraged to provide incentives, financing  
20 mechanisms, and funding to assist property owners with these  
21 retrofit obligations.

22 1101.2. (a) On and after January 1, 2014, all—existing  
23 *noncompliant* plumbing fixtures in any residential or commercial  
24 real property ~~that are not water-conserving plumbing fixtures~~ shall  
25 be replaced prior to the time of sale or transfer by the property  
26 owner with water-conserving plumbing fixtures.

27 (b) Compliance with this section shall be included as a condition  
28 of escrow for any sale or transfer.

29 ~~(c) A seller or transferor shall disclose the requirements of this~~  
30 ~~section in advance of any sale or transfer of real property. The~~  
31 ~~disclosure of the requirements of this section is a material term of~~  
32 ~~any sale or transfer.~~

33 ~~(d)~~

34 (c) A seller or transferor of real property shall certify to the  
35 prospective purchaser or transferee, in writing, ~~under penalty of~~  
36 ~~perjury~~, that the requirements of this section have been satisfied.  
37 This certification *is a material term of any sale or transfer and*  
38 may be included in other transactional documents.

39 1101.3. For the purposes of this article:

1 (a) ~~“Existing~~ “Noncompliant plumbing fixture” means any of  
2 the following:

3 (1) Any toilet manufactured to use more than 1.6 gallons of  
4 water per flush.

5 (2) Any urinal manufactured to use more than one gallon of  
6 water per flush.

7 (3) Any showerhead manufactured to have a flow capacity of  
8 more than 2.5 gallons of water per minute.

9 (4) Any interior faucet that emits more than 2.2 gallons of water  
10 per minute.

11 (b) ~~“Water-conserving plumbing fixtures” means any fixtures~~  
12 ~~that use less water than existing plumbing fixtures. fixture” means~~  
13 *any fixture that is in compliance with current building standards*  
14 *applicable to a newly constructed residential or commercial real*  
15 *property of the same type.*

16 (c) “Sale or transfer” means the sale or transfer of an entire real  
17 property estate or the fee interest in that real property estate and  
18 does not include the sale or transfer of a partial interest, including  
19 a leasehold.

20 1101.4. This article shall not apply to any of the following:

21 (a) Registered historical sites.

22 (b) Transfers that are required to be preceded by the furnishing  
23 to a prospective transferee of a copy of a public report pursuant to  
24 Section 11018.1 of the Business and Professions Code and transfers  
25 which can be made without a public report pursuant to Section  
26 11010.4 of the Business and Professions Code.

27 (c) Transfers by a fiduciary in the course of the administration  
28 of a decedent’s estate, guardianship, conservatorship, or trust.

29 (d) Transfers from one coowner to one or more other coowners,  
30 or from one or more coowners into or from a revocable trust, if  
31 the trust is for the benefit of the grantor or grantors.

32 (e) Transfers made by a trustor to fund an inter vivos trust.

33 (f) Transfers made to a spouse, to a registered domestic partner  
34 as defined in Section 297 of the Family Code, or to a person or  
35 persons in the lineal line of consanguinity of one or more of the  
36 transferors.

37 (g) Transfers between spouses or registered domestic partners  
38 resulting from a decree of dissolution of marriage or domestic  
39 partnership, or a decree of legal separation or from a property  
40 settlement agreement incidental to a decree.

1 (h) Transfers in which a licensed plumber certifies that, due to  
2 the age or configuration of the property or its plumbing, installation  
3 of water-conserving plumbing fixtures is not technically feasible.

4 1101.5. (a) Any real estate agent, real estate broker, or real  
5 estate salesperson, whether representing a transferor or transferee,  
6 or both, involved in the transfer of title to property subject to this  
7 chapter, shall give written notice to the transferee and transferor  
8 of the requirements of this article prior to the transfer of title to  
9 the property.

10 (b) The duty described in subdivision (a) is the only  
11 responsibility of the real estate agent, real estate broker, or real  
12 estate salesperson has with regard to this article and the real estate  
13 agent, real estate broker, or real estate salesperson shall have no  
14 liability for any transferor's failure to comply with any other  
15 provisions provision of this article.

16 (c) Once a transferring property owner has received notice of  
17 the requirements of this article, he or she shall be solely responsible  
18 for compliance with them.

19 1101.6. This article does not preempt any retrofit requirements  
20 that will a city, county, or city and county from adopting or  
21 enforcing any retrofit requirements relating to noncompliant  
22 plumbing fixtures that result in an equivalent or greater amount of  
23 water savings than those provided for in this article.

24 ~~SEC. 2. No reimbursement is required by this act pursuant to~~  
25 ~~Section 6 of Article XIII B of the California Constitution because~~  
26 ~~the only costs that may be incurred by a local agency or school~~  
27 ~~district will be incurred because this act creates a new crime or~~  
28 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
29 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
30 ~~the Government Code, or changes the definition of a crime within~~  
31 ~~the meaning of Section 6 of Article XIII B of the California~~  
32 ~~Constitution.~~